

Dear Paul,

9/30/84

When Jim and I spoke last night he indicated that you are not satisfied with the affidavits I provided, that at least to some degree he thinks as you do, that they had been delayed in reaching you and that you are going to write. I write about something else.

Most of us who are not lawyers know, care and think little about laws until we must and then we turn to experts. In general, law is so technical and complex there is no alternative. So most of us end knowing and thinking and sometimes caring little about laws.

FOIA, however, is not the same as other laws. Ordinarily, if John sues Joe they are the only people concerned. The plaintiff in FOIA litigation, however, represents all the people. If he wins the people win; if he loses, all the people lose. What he obtains through the litigation is not his personal property, although I believe few would argue that he is entitled to the scholarly norm, first use.

If this were not the intent of the law it would still be a moral and ethical requirement. It has been burdensome and sometimes disagreeable to me but I live by it. There is no one I have refused and when I believe the information of enough significance I ~~have~~ waive first use and give it away. Like the 1/21 transcript, the first Lab records I got in the King case. There are other illustrations but I cite these two because, in fact, I held press conferences to be able to give that information away to more people and to enable it to thereby reach more people.

The FOIA plaintiff does not sue for himself alone and in fact he cannot. He cannot quit without quitting for all the people, those he does not consult if he even thinks of them. He undertakes an obligation when he files suit to pursue the popular interest to the degree and with all the vigor possible. If he is not willing to do this he ought not sue to begin with because he has no right to waive or squander the rights of all others.

In the case in question it is not a simple matter between you and the CIA. It is you on behalf of all the people and the CIA, and what you do not do does not get done. If you are content to let the CIA screw you, you have no moral or ethical right to let the CIA screw all the people through you. Or to suppress what you do not fight to get forever.

In litigation you represent more than all the "critics." You represent the country.

If you have not thought of it this way before, you should now. It is the reality.

I doubt if anyone can tell you how burdensome this is with more experience than I have. Or the amount of unwanted ~~work~~ work, time and cost it means. I am in litigation now that I wanted to and tried to end many years ago, as Jim knows and can tell you, only to protect the rights of all. In this I risked a contempt citation. Which it happens I would have welcomed and dared the government to seek because it would have hurt the government more than it would have hurt me. I have gone to enormous effort administratively and in the courts in the interest of others and against personal interest because this is the obligation the FOIA plaintiff imposes upon himself when he files suit. The administrative representation of this in both areas, JFK and King, is two jammed file cabinets of what I filed. Can you visualize the work and cost this represents? Can you imagine what I would have preferred doing with all that time instead?

For years I felt that I could not honestly write with litigation unended. Now that I have less time, in toto and daily, I decided that I could wait no longer. I no sooner started than there were new intrusions, the fight to keep the CIA from being exempt and what they had done in your case. I laid my own work aside to try to help. Not on a personal basis, although I would have on that basis. It is the obligation

we all must assume to the degree we can. Most people can't, so that makes it more important that those of us who can make what effort we can.

Those of you who are by nature academicians and who live that way do not contend with the real world in political and FOIA legal matters, whether or not you ever think this way or can bring yourselves to try. You have lived different lives and do not and cannot see the real world of these areas.

Jim has heard me say this often enough and often enough he's had the proof in developments that I, detached from them, could see as possible when he with all his intense involvement did not even think of. Example is his enormous effort on behalf of everyone, an effort made more difficult by the extent of total abdication of so many who ought not have abdicated, in fighting FOIA exemption for the CIA. I told him before or when the House voted that there could be a dispute between the Houses, requiring a conference and a conference report. We don't know the end, but it has happened. I have experience in those areas and instincts coming from those experiences, far in the past as they are. He can also tell you that the Naders like me less because in 1974 I told them in advance that the deal they had with Ford was worthless, that he'd doublecross them, and that in spite of themselves FOIA would prevail. Nobody else saw or thought that way. Including Jim and Bud. *But it happened exactly that way.*

As especially a physicist knows, the real world abhors any vacuum. In the real world there can be advantages in rushing to fill the vacuum. And dangers from not trying. Lawyers, Jim included, can always see that there is time because under the law and practises there is supposed to be time. But judges are a law unto themselves, they do what they damned well please and for the most part nothing can be done about it. Jim has seen often enough that litigants get wiped out when they depend on things going the way they are supposed to go. We have a good current ~~example~~ example of this in the field offices case where we should have had time to do the things we planned and toward which I had exerted great effort only to have a fink judge wipe it all out.

You are before a judge who can be mercurial, whose word in my personal experience is worthless and who has, with me, a record of accepting lies from the CIA even when they were proven to be lies, unrefutedly proved to be lies, before he acted.

As of last evening Jim told me there is plenty of time. I hope so. I would ~~never~~ never depend on it. Jim himself was recently wiped out before one of the very best judges on the very basis that he had not acted soon enough, although Jim, and perhaps most lawyers, would have felt that he had not wasted time or his rights. The real world is not the world of law schools, either.

Until I see your objections I do not know what they are. I may agree with them because I rushed in the belief that rushing was necessary. Not knowing them I have no reference to them in this or in my mind. I want only to try to impress upon you that once you've filed FOIA suit you cannot serve your own personal interests only but must meet the obligations to all that you assume in filing the litigation. I hope you will think about this because I know that in the past you have been willing to let things drop as not worth the effort they require. Outside of FOIA litigation this can be sound reasoning. In FOIA litigation you can sell the whole country out that way.

Instead of the pertinent fable of King Bruce I'll tell you a real story. Bud did poorly before the district court in the first spectro suit, even worse, disastrously worse, before the appeals court, as he recognized and admitted, having heard (not then and not since) any complaint. Jim, who had never appeared before a jury or even taken the District bar exams, handled the briefing and filed the petition cert. Which was rejected. All was lost? So it appeared. Yet against all the odds it was over this, specifically, that Congress amended Exemption 7 to open the FBI, CIA and other similar files. Only since then the government, often aided and abetted by plaintiff's lawyers who did not so intend, have been rewriting the act again. In haste,

*Harold*